UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF EMPIRE STATE CARPENTERS ANNUITY, APPRENTICESHIP, LABOR MANAGEMENT COOPERATION, PENSION and WELFARE FUNDS,

MEMORANDUM & ORDER 15-CV-2843 (JS) (AYS)

Petitioners,

-against-

DUNCAN & SON CARPENTRY, INC.,

Respondent.

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APPEARANCES

For Petitioners: Charles R. Virginia, Esq.

Nicole Marimon, Esq. Elina Burke, Esq.

Virginia & Ambinder LLP 40 Broad Street, 7th Floor

New York, NY 10004

For Respondent: No appearance

SEYBERT, District Judge:

Pending before the Court is Magistrate Judge Anne Y. Shields' Report and Recommendation ("R&R") recommending that this Court: (1) treat the unopposed petition to confirm the arbitration award as an unopposed motion for summary judgment, (2) grant the petition to confirm and enforce the arbitration award, and (3) direct the Clerk of the Court to enter judgment in favor of petitioners in the amount of \$420,084.17. (R&R, Docket Entry 12, at 1.) For the following reasons, the Court ADOPTS Judge Shields' R&R in its entirety.

BACKGROUND

On May 18, 2015, Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor Management Cooperation, Pension and Welfare Funds ("Petitioners") filed a petition to confirm and enforce an arbitration award (the "Petition") against Duncan & Son Carpentry, Inc., ("Respondent") pursuant to section 502(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(3), Section 301 of the Labor Management Relations Act of 1947 ("LMRA"), as amended 29 U.S.C. § 185, and Section 9 of the Federal Arbitration Act, 9 U.S.C. § 9. (Pet., Docket Entry 1, ¶1.) An arbitrator rendered an award against Respondent in the amount of \$419,054.17 on January 22, 2015, after concluding that Respondent violated several collective bargaining agreements with the Northeast Regional Council of Carpenters f/k/a the Empire State Regional Council of Carpenters. (Pet. ¶¶ 7, 20-21.) Respondent has failed to abide by the award, (Pet. \P 23), and has not appeared in this action.

On August 22, 2016, the undersigned referred the Petition to Judge Shields for a Report and Recommendation on whether the Petition should be granted. (Referral Order, Docket Entry 11.) On January 30, 2017, Judge Shields issued her R&R recommending that: (1) the unopposed Petition be treated as an unopposed motion for summary judgment, (2) the Petition to enforce and confirm the award be granted, and (3) judgment be entered in

favor of Petitioners in the amount of \$419,054.17, plus attorneys' fees of \$562.50, and costs of \$467.50, for a total award of \$420,084.17. (R&R at 1.)

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b) (1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." <u>Urena v. New York</u>, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen (14) days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Shields' R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety.

CONCLUSION

Judge Shields' R&R (Docket Entry 12) is ADOPTED in its entirety. The Petition to confirm and enforce the arbitration award (Docket Entry 1) is GRANTED. The Clerk of the Court is directed to enter judgment in favor of Petitioners in the amount of \$419,054.17, plus attorneys' fees of \$562.50, and costs of

\$467.50, for a total award of \$420,084.17. Petitioners are directed to mail a copy of this Order to the Respondent and file proof of service on ECF within five (5) days.

SO ORDERED.

/s/ JOANNA SEYBERT

Joanna Seybert, U.S.D.J.

Dated: March 10, 2017
Central Islip, New York